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FEDERAL EMPLOYEES FLEXIBLE AND COMPRESSED WORK SCHEDULES ACT OF 1982

APRIL 28 (legislative day, APRIL 13), 1982.—Ordered to be printed

Mr. ROTH, from the Committee on Governmental Affairs, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 2240]

The Committee on Governmental Affairs, to which was referred the bill (S. 2240) to amend title 5, United States Code, to provide permanent authorization for Federal agencies to use flexible and compressed employees work schedules, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

AMENDMENTS

The amendments are as follows:

On page 3, between lines 21 and 22, add the following new paragraph:

> (8) "collective bargaining", "collective bargaining agreement", and "exclusive representative" have the same meanings given such terms—
>
> (A) by section 7103(a)(12), (8), and (16) of this title, respectively, in the case of any unit covered by chapter 71 of this title; and
>
> (B) in the case of any other unit, by the corresponding provisions applicable under the personnel system covering this unit.

On page 8, beginning with line 19, strike all through page 9, line 2 and insert in lieu thereof the following:

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(b) Any employee who is on a flexible schedule program under section 6122 of this title and who is no longer subject to such a program shall be paid at such employee's then current rate of basic pay for—

(1) in the case of a full-time employee, not more than 24 credit hours accumulated by such employee, or

(2) in the case of a part-time employee, the number of credit hours (not excess of one fourth of the hours in such employee's biweekly basic work requirement) accumulated by such employee.

On page 12, beginning with line 1, strike all through line 25 and insert in lieu thereof the following:

§ 6130 Application of programs in the case of collective bargaining agreements

(a) (1) In the case of employees in a unit represented by an exclusive representative, any flexible or compressed work schedule, and the establishment and termination of any such schedule, shall be subject to the provisions of this subchapter and the terms of a collective bargaining agreement between the agency and the exclusive representative.

(2) Employes within a unit represented by an exclusive representative shall not be included within any program under this subchapter except to the extent expressly provided under a collective bargaining agreement between the agency and the exclusive representative.

(b) An agency may not participate in a flexible or compressed schedule program under a collective bargaining agreement which contains premium pay provisions which are inconsistent with the provisions of section 6123 or 6128 of this title, as applicable.

On page 13. beginning with line 2. strike all through page 15, line 3 and insert in lieu thereof the following:

(a) Notwithstanding the preceding provisions of this subchapter or any collective bargaining agreement and subject to subsection (c) of this section, if the head of an agency finds that a particular flexible or compressed schedule under this subchapter has had or would have an adverse agency impact, the agency shall promptly determine not to—

(1) establish such schedule; or

(2) continue such schedule, if the schedule has already been established.

(b) For purposes of this section, 'adverse agency impact' means—

(1) a reduction of the productivity of the agency;

(2) a diminished level of services furnished to the public by the agency; or

(3) an increase in the cost of agency operations.

(c)(1) This subsection shall apply in the case of any schedule covering employees in a unit represented by an exclusive representative.

(2)(A) If an agency and an exclusive representative reach an impasse in collective bargaining with respect to an agency determination under subsection (a)(1) not to establish a flexible or compressed schedule, the impasse shall be presented to the Federal Service Impasses Panel (hereinafter in this section referred to as the 'Panel').

(B) The Panel shall promptly consider any case presented under subparagraph (A), and shall take final action in favor of the agency's determination if the finding on which it is based is supported by evidence that the schedule is likely to cause an adverse agency impact.

(3)(A) If an agency and an exclusive representative have entered into a collective bargaining agreement providing for use of a flexible or compressed schedule under this subchapter and the head of the agency determines under subsection (a)(2) to terminate a flexible or compressed schedule, the agency may reopen the agreement to seek termination of the schedule involved.

(B) If the agency and exclusive representative reach an impasse in collective bargaining with respect to terminating such schedule, the impasse shall be presented to the Panel.

(C) The Panel shall promptly consider any case presented under subparagraph (B), and shall rule on such impasse not later than 60 days after the date the Panel is presented the impasse. The Panel shall take final action in favor of the agency's determination to terminate a schedule if the finding on which the determination is based is supported by evidence that the schedule has caused an adverse agency impact.

(D) Any such schedule may not be terminated until—

(i) the agreement covering such schedule is renegotiated or expires or terminates pursuant to the terms of that agreement; or

(ii) the date of the Panel's final decision, if an impasse arose in the reopening of the agreement under subparagraph (A) of this paragraph.

(d) This section shall not apply with respect to flexible schedules that may be established without regard to the authority provided under this subchapter.

Explanation of Amendments

The first Committee amendment defines the terms "collective bargaining", "collective bargaining agreement", and "exclusive representative".

The second Committee amendment is a technical amendment.

The third Committee amendment is primarily a technical amendment which clarifies that the establishment and termination of alternative work schedules which cover employees represented by an exclusive representative are fully negotiable, subject to the provisions of the rest of the bill.

The fourth Committee amendment is primarily a technical amendment which clarifies the criteria for the use of alternative work schedules and review of impasses resulting from the institution and termination of a schedule covering employees in a unit represented by an exclusive representative.

Background and Statement

During the past three years, more than 325,000 federal employees in 1,500 organizations participated in a generally successful experimental alternative work schedules program. The experiment, authorized by the 95th Congress for three years, involved the use of both flexible and compressed work schedules. Flexible work schedules allow employees, within limits, to vary the times they report for duty and depart from work. Compressed work schedules allow employees to complete their same hourly requirements in fewer days; e.g., four, ten-hour days in contrast to five, eight-hour days.

The Final Report To The President And The Congress regarding the Alternative Work Schedules' Experimental Program asserts that the program, in most cases, was beneficial to the public and to the employees themselves. However, there were some notable examples of failures.

The benefits of these schedules to employees were overwhelming. Working parents could structure their work schedules to best attend to their children's needs. Appointments outside of the office could be more easily scheduled without the necessity of taking sick or annual leave. Travel times to and from the office were reduced. Employees generally had a greater degree of control over their work lives which provided them with more time to devote to non-work activities.

The benefits of these schedules to government, when utilized in a proper fashion, were also significant. Hours of service to the public increased. Tardiness and absenteeism of employees were reduced. Energy consumption in buildings decreased. General productivity was enhanced.

On the other hand, improper use of alternative work schedules did have some serious repercussions. In some cases, productivity and work performance declined. Service to the public was delayed and hindered. Workers were unavailable when needed. Costs increased.

The result of the experimental program showed that the use of alternative work schedules can be beneficial to all concerned when the schedules are used properly. The most important consideration in the utilization of these schedules is whether service to the public is being harmed in any significant way. Government exists to serve the people. Although it is not often recognized these days, government employment remains public service. When one joins the federal workforce, he is assuming the significant responsibility of serving the public. Actions or programs, regardless of their merit, which hinder service to the public, need to be changed. Those responsible for the effectual workings of government are the managers. If government managers find that their unit's mission is not being effectively accomplished due to scheduling arrangements of their employees, they need the flexibility to alter these arrangements within the confines of certain basic employee protections.

On the other hand, one of the most protected rights gained by the organized labor movement is the inviolability of the collective bargaining process. Once an item is deemed a bargainable issue, it takes an extraordinary situation to show that bargaining itself is not in the public interest. The increased standard of living during this century is in large part attributable to hard-won employees protections by the organized labor movement. In light of the fact that alternative work schedules under the experimental program were bargainable, the question becomes "Has bargaining over alternative work schedules hindered the effective management of government and thereby reduced service to the public?" The Committee finds the answer to be generally no. The Committee finds that in certain situations alternative work schedules do not and will not work. The remedy for such situations lies in building standards in the law for when a particular schedule is inappropriate, not encroaching into the sphere of negotiation. The Committee reasserts the position that the use of alternative work schedules is negotiable.

However, as previously discussed, the operation of government is to serve the public. The Committee feels that an alternative work schedule which is likely to reduce productivity, hinder service to the public, or increase agency costs, should never be instituted. In a bargaining situation, the question as to who makes this determination is an all important one. The agency, representing management, is responsible for making the initial determination that a particular schedule will have an adverse impact. However, empowering the agency to make the final determination amounts to a unilateral right to not negotiate which could ultimately lend itself to capricious decisions by each new Administration. The Committee expects full negotiation on all aspects of an alternative work schedule. Thus, if an agency feels that a particular schedule will have an adverse impact and reaches an impasse with the exclusive representative over this issue, the issue will be resolved by the Federal Service Impasses Panel.

The burden will be on the agency to show that the schedule will likely result in an adverse impact. If the agency makes that showing, the Panel will have no choice but to uphold the agency's decision to not institute the particular schedule.

Sometimes, however, a particular schedule, initially considered to be a positive arrangement, turns sour after implementation. The agency must be permitted to seek a change. Normally, the pure bargaining process would prohibit one party from unilaterally reopening a negotiated agreement. The Committee finds, however, that such an extraordinary remedy is prudent in this case. There may well be, and have been, cases where a particular schedule is not working. In these cases, an agency is granted the limited right to reopen an agreement to seek termination of an egregious schedule. Once an agreement is reopened, the termination of a schedule will be fully negotiable. Once again, if the parties reach an impasse, they may request the Federal Service Impasses Panel to resolve the issue of termination. In no circumstances may an agency terminate a schedule which is subject to a negotiated agreement before the Panel makes a final determination. The burden again will be on the agency to show there has been an adverse agency impact. The Panel must make a decision on this issue within 60 days of its initial involvement.

Lastly, the legislation authorizes agencies to unilaterally terminate alternative work schedules established pursuant to the experimental program. This legislation is not simply a reauthorization. The experimental program is an experiment. This legislation is a program authorization. Therefore, schedules established pursuant to the experiment may only continue under the authority of section 4 of the Act.

LETTER TO THE CHAIRMAN FROM THE DIRECTOR OF THE OFFICE OF PERSONNEL MANAGEMENT

U.S. OFFICE OF PERSONNEL MANAGEMENT,
Washington, D.C., April 16, 1982.

Hon. WILLIAM V. ROTH, Jr.,
Chairman, Committee on Governmental Affairs,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to an oral request from a member of your staff for the views of the Office of Personnel Management on S. 2240, a bill "To amend title 5, United States Code, to provide permanent authorization for Federal agencies to use flexible and compressed employee work schedules." You have asked that we address these comments to S. 2240 as it has been amended by the Committee on Governmental Affairs.

Under Public Law 95–390, the Federal Employees Flexible and Compressed Work Schedules Act of 1978, the Government has conducted a three-year experiment with the use of alternative work schedules. This experiment (which has been temporarily extended by Public Law 97–160) has shown that alternative work schedules can be valuable and should be continued where appropriate, but the experiment has also shown that there is a serious need for greater management controls over the use of such schedules than was provided by Public Law 95–390.

S. 2240, as amended, would accomplish these goals. The authority to utilize flexible and compressed schedules in the Federal Government would be continued for three more years, and the law would also provide a review mechanism whereby agency management could ensure that the use of such alternative work schedules would not adversely affect agency productivity or service to the public, or increase the cost of agency operations. The bill would also permit agency management to terminate unilaterally any existing flexible or compressed work schedules that management finds to be having such adverse effects.

We believe that S. 2240, as amended, represents a satisfactory compromise between the normal processes of labor-management relations in the Government and the need to ensure that the public interest is protected in the area of alternative work schedules. Accordingly, the Office of Personnel Management supports the enactment of S. 2240, as amended.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the submission of this report on S. 2240, as amended.

Sincerely yours,

DONALD J. DEVINE, *Director.*

SECTION-BY-SECTION ANALYSIS

SECTION 1

The first section provides that the Act may be cited as the "Federal Employees Flexible and Compressed Work Schedules Act of 1982".

SECTION 2

The second section amends chapter 61 of title 5, United States Code, by adding a new subchapter II. Unless otherwise noted, section references below are to sections of title 5, as added by the bill.

Section 6120 states the purpose for the legislation. Congress sees the benefit of these schedules being potential improved productivity and greater service to the public.

Definitions

Section 6121 of new subchapter II defines certain terms used in that subchapter.

Paragraph (1) defines the term "agency" to mean an Executive agency (see 5 U.S.C. 105) and a military department (see 5 U.S.C. 102). This definition has been expanded from the experimental period to now include the Library of Congress. The term does not include the Postal Service or the Postal Rate Commission.

Paragraph (2) provides that "employee" has the meaning given it by section 2105 of title 5.

Paragraph (3) defines the term "basic work requirement" to mean the number of hours, excluding overtime hours, which an employee is required to work or is required to account for by leave or otherwise.

In view of the nature of a flexible schedule or compressed schedule experiment, any standard for determining what constitutes a regular work period must be adaptable to the particular flexible or compressed schedule. Accordingly, an employee's "basic work requirement" may be calculated on a daily, weekly, or biweekly basis depending on the hours which a particular employee is required to work or to otherwise account for. For example, a full-time employee working the standard 8-hour/5-day week has an 8-hour daily basic work requirement, a 40-hour weekly basic work requirement, and an 80-hour biweekly basic work requirement. An employee under a compressed schedule such as the 5–4–9 program, which consists of a 9-hour day/5-day workweek followed by an approximately 9-hour day/workweek has a 9-hour daily basic work requirement, one 45-hour weekly basic work requirement (first week), one 35-hour weekly basic work requirement (second week), and an 80-hour biweekly basic work requirement. Similarly, an employee under a compressed schedule which consists of four 10-hour days each week, has a 10-hour daily basic work requirement, a 40-hour weekly basic work requirement, and an 80-hour biweekly basic work requirement.

The phrase "is required to work or is required to account for by leave or otherwise", indicates that in fulfilling a basic work requirement an employee may account for all or a portion of the required time through annual leave, sick leave, or other officially approved absence, or under a flexible schedule experiment, through credit hours.

Paragraph (4) defines the term "credit hours" to mean any hours within a flexible schedule which are in excess of the number of hours in an employee's basic work requirement and which the employee elects to work so as to vary the length of a workweek or workday. Three requirements must be met before time worked qualifies as credit hours: (1) the hours worked must fall within the flexible schedule, i.e., within the designated hours during which an employee must be present for work or the designated hours during which an employee is permitted to elect a time of arrival and time of departure from work (see section 6122 discussed below); (2) the hours worked must be in excess of the employee's basic work requirement; and (3) the employee must elect to work the hours.

Paragraph (5) defines the term "compressed schedule" to mean: (A) in the case of a full-time employee, an 80-hour biweekly basic work requirement which is scheduled for less than 10 full workdays; and (B) in the case of a part-time employee, a biweekly basic work requirement of less than 80 hours established for less than 10 days.

Paragraph (6) defines the term "overtime hours", when used with respect to flexible schedule programs, to mean all hours in excess of 8 hours in a day or 40 hours in a week, which are officially ordered in advance. Since overtime hours are those hours of work ordered in advance, not those elected by the employee, overtime hours cannot include credit hours.

Paragraph (7) of section 6121 defines the term "overtime hours", when used with respect to compressed schedule programs, to mean any hours in excess of those hours which constitute the compressed schedule.

Flexible schedules

Section 6122 of new subchapter II authorizes agencies to use flexible schedules and sets forth specific requirements and conditions with respect to their use.

Section 6122(a) provides that flexible schedules may be used "[n]otwithstanding section 6101 of title 5, United States Code". Section 6101 of title 5 establishes certain requirements relating to work schedules and workweeks, one of which is that each agency head must establish a basic administrative workweek of 40 hours. This requirement precludes the use of flexible schedules designed to permit an employee to vary the length of a workweek. If the requirements of section 6101 conflict with a flexible schedule, those requirements shall be deemed inapplicable.

Paragraph (1) and (2) of section 6122(a) set forth requirements for flexible schedules. Paragraph (1) provides a flexible schedule must include designated hours during which an employee must be present for work. These designated hours are referred to as "core time".

Paragraph (2) provides flexible schedules must also include designated hours during which an employee may elect the time of arrival at and departure from work, for the purpose of varying arrival or departure times, or if and to the extent permitted, for the purpose of accumulating credit hours. These designated hours are referred to as "flexible hours". The last sentence of section 6122(a) provides that

an employee's election with respect to his arrival or departure from work is subject to limitations generally prescribed, if any, to ensure that the duties and requirements of the employee's position are fulfilled.

Section 6122(b) provides that if the head of an agency determines that an organization within the agency which is participating in a flexible schedule program is being substantially disrupted in carrying out its functions or is incurring additional costs because of participation in the program, the agency head may: (A) restrict the employee's choice of arrival and departure time; (B) restrict the use of credit hours; or (C) exclude from the program any employee or group of employees.

Section 6122(b) specifically provides that actions by an agency are subject to the requirements of section 6130 of new subchapter II.

Compensation for overtime hours and nightwork

Section 6123 of new subchapter II describes methods for computing premium pay for employees under a flexible schedule.

Section 6123(a) sets forth the method for determining compensation for overtime hours (as defined in section 6121(6), discussed above) under a flexible schedule.

Paragraph (1) of section 6123(a) permits liberal use of compensatory time off. (Compensatory time off, which permits an employee to exchange an amount of time spent in overtime work for an equal amount of time off, is analogous to credit hours.) Under existing law (5 U.S.C. 5543(a)(1)), compensatory time off may be granted only for time spent in irregular or occasional overtime work. Paragraph (1) provides an employee may request compensatory time for all overtime worked, not just that overtime which is irregular or occasional in nature. Compensatory time may be granted, upon request of the employees, notwithstanding the provisions of section 5542(a), 5543(a)(1), 5544(a), and 5550 of title 5, United States Code, section 4107(e)(5) of title 38, United States Code, or section 7 of the Fair Labor Standards Act, as amended, each of which pertains to requiring premium pay for time worked in excess of 8 hours per day or 40 hours per week. Since compensatory time off may be granted only upon the request of the employee, the employee retains the right to receive overtime pay if it is preferable to compensatory time off. Paragraph (2) specifically states that unless an employee has requested and been granted compensatory time off, the employee shall be compensated for overtime worked in accordance with applicable provisions of law.

This legislation does not relieve an agency of its existing statutory obligation to compensate an employee for "overtime hours", i.e., those worked in excess of 8 hours in a day or 40 hours in a week. However, due to the permissive nature of a flexible work schedule which allows an employee to voluntarily extend his work hours to accumulate credit hours, an accommodation with existing statutory provisions relating to overtime entitlement is necessary.

For instance, section 5542(a) of title 5, United States Code, relating to overtime rates, provides that "hours of work officially ordered or approved" shall be compensated as overtime. Section 6121(6) of new subchapter II, however, defines "overtime hours", for purposes of

flexible schedules, as all hours in excess of 8 hours per day or 40 hours per week which are "officialy ordered in advance". The requirement that overtime be ordered in advance eliminates the problem which would arise under a flexible schedule if an agency were required to determine, after the fact, whether it is appropriate to approve as "overtime", hours in excess of 8 hours per day or 40 hours per week which an employee voluntarily elected to work.

Similarly, section 7 of the Fair Labor Standards Act, as amended, provides that "no employer shall employ any of his employees . . . for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed." Section 3(g) of that act provides that " 'Employ' means to suffer or permit work." Thus, under that act an employee under a flexible schedule may not voluntarily extend the length of one workweek to reduce the length of a subsequent workweek.

Section 6123(b) of new subchapter II provides that notwithstanding the provisions of law referred to in paragraph (1) of section 6123(a), relating to compensation for overtime, an employee is not entitled to compensation for credit hours worked except to the extent authorized under section 6126 of new subchapter II, or to the extent he is allowed to have the credit hours taken into account with respect to his basic work requirement.

Section 6123(c) governs night-shift differentials for employees under flexible schedules. Premium pay for night work (night-shift differential) is authorized under several statutory provisions.

Section 5545(a) of title 5, United States Code, provides that night-shift differential shall be paid to employees subject to that section for all regularly scheduled work between the hours of 6 p.m. and 6 a.m. Under flexible schedules, the provisions of section 5545(a) would enable an employee to earn night-shift differential simply by arriving or departing, or working credit hours, during those hours for which night-shift differential is required. Paragraph (1) of section 6123(c) prevents this situation from occurring. It does not, however, deny an employee night-shift differential for overtime hours worked during a period when it is authorized, or for hours which must be worked during such a period in order to fulfill a basic work requirement.

Paragraph (1) describes two situations in which the night-shift differential must be paid. Subparagraph (A) provides that if (i) the number of hours during which an employee must be present for work ("core time") plus (ii) the number of hours during which he may elect to work credit hours or elect the time of his arrival or departure ("flexible hours"), which occur outside the night work hours designated in or under section 5545(a) of title 5, total less than 8 full hours, the employee is entitled to night-shift differential for those hours worked between 6 p.m. and 6 a.m. which, when combined with such total, do not exceed 8 hours.

For example, if the flexible schedule is established from 11 a.m. to 11 p.m. with the employee required to be present during the period from 2 to 6 p.m., the maximum number of hours which the employee can work prior to 6 p.m. is 7 hours. Accordingly, the employee is en-

titled to night-shift differential for 1 hour worked between 6 p.m. and 11 p.m. since 1 hour must be worked during the night-shift period to complete an 8-hour day under the flexible schedule. If the employee, as a matter of personal preference, elects to work from 2 p.m. until 8 p.m., he still is entitled to only 1 hour of night-shift differential since under the flexible schedule, he could have worked 7 hours prior to 6 p.m.

If, on the other hand, the flexible schedule is established from 9 a.m. to 9 p.m. with employees required to be present from 12 noon to 3:30 p.m., an employee would have adequate opportunity to work 8 full hours prior to 6 p.m. If as a matter of personal preference an employee elected to begin work one day at noon and work until 9 p.m., there would be no entitlement to night-shift differential, although one credit hour would be earned.

A second situation in which an employee assigned to a flexible schedule is entitled to night-shift differential under section 5545(a) of title 5, is covered under subparagraph (B) of section 6123(c)(1). It provides that if an employee is on a flexible schedule under which the hours during which he must be present for work ("core time") include any hours designated in or under section 5545(a) night-shift differential is paid for hours so designated.

Paragraph (2) of section 6123(c) relates to night-shift differential which, but for that paragraph, would be authorized for employees under section 5343(f) of title 5, United States Code, relating to night-shift differential for prevailing rate employees, or section 4107(e)(2) of title 38, United States Code, relating to night-shift differential for nurses in veterans' hospitals.

Under section 5343(f) a prevailing rate employee is entitled to night-shift differential if a majority of the hours of his regularly scheduled nonovertime work occur between the hours specified in that section. Under section 4107(e)(2), a nurse is entitled to a differential when at least 4 hours of regularly scheduled nonovertime work fall between the hours specified in that section.

Paragraph (2) of section 6123(c) preserves the existing statutory basis for entitlement to night-shift differential for employees subject to sections 4343(f) of title 5, and 4107(e)(2) of title 38, but provides those employee are not entitled to night-shift differential solely because they elect to work credit hours, or elect to arrive or depart at a time of day for which night-shift differential is otherwise authorized.

Holidays

Section 6124 of new subchapter II provides that notwithstanding sections 6103 and 6104 of title 5, United States Code, an employee under a flexible schedule who is prevented or relieved from working on a day designated as a holiday by Federal statute or Executive order is entitled to pay with respect to that day for 8 hours (or in the case of a part-time employee, an appropriate portion of the employee's biweekly basic work requirement, as determined under regulations prescribed by the Office).

Sections 6103 and 6104 of title 5, which govern pay for legal public holidays, speak in terms of "workday" and "day on which an ordinary day's work is performed". Under many flexible schedules, such terms have no fixed meaning since under those schedules the "workday" or "an ordinary day's work" may vary. Accordingly, section 6124 provides

a fixed measure, i.e., 8 hours, for determining holiday pay for employees under a flexible schedule. This provision ensures that an employee's pay for a legal holiday under new subchapter II will be consistent with existing law.

Time recording devices

Section 6125 of new subchapter II provides that notwithstanding section 6106 of title 5, United States Code, an agency may use recording clocks as part of flexible schedule programs. Section 6106 prohibits the use by an agency of a recording clock in the District of Columbia.

Additionally, the Bureau of Engraving and Printing of the Department of the Treasury has been exempted from the time clock prohibition of section 6106 for non-alternative work schedules. This exemption will allow the Bureau to operate economically and to be reimbursed by its customers for the direct and indirect costs of operation.

Credit hours; accumulation and compensation

Section 6126 of new subchapter II limits the accumulation of credit hours by an employee under a flexible schedule and provides compensation for accumulated credit hours in the event an employee ceases to be subject to a flexible schedule.

Subsection (a) of section 6126 permits a full-time employee under a flexible schedule to carry over, subject to any limitation prescribed by the agency, a maximum of 24 credit hours from one biweekly pay period to a subsequent biweekly pay period. A limitation on the number of credit hours which may be carried over is necessary to ensure that credit hours are not accumulated and used as a basis for long term leave. Section 6126(a) also provides that accumulation of credit hours for part-time employees is on a pro rata basis, and those employees are entitled to accumulate and carry over a number of credit hours equal to one-fourth of a biweekly basic work requirement.

Subsection (b) of section 6126 provides compensation for unused credit hours for an employee who is no longer subject to a flexible schedule. A full-time employee is entitled to be paid at his then current rate of basic pay for not more than 24 accumulated credit hours. A part-time employee is entitled to compensation for those credit hours accumulated which are not in excess of one-fourth of his biweekly work requirement.

Compressed schedules

Section 6127 of new subchapter II authorizes agencies to use compressed schedules.

Section 6127(a) provides that compressed schedule programs may be used "[n]otwithstanding section 6101 of title 5, United States Code." Section 6101(a)(3) provides that except when the head of an agency determines that his organization would be seriously handicapped in carrying out its functions or that costs would be substantially increased, he must, among other things, establish a 5-day/8-hour-day workweek. This is inconsistent with the use of compressed schedules.

Section 6127(b) provides protections for employees when a majority of employees in a unit do not wish to participate in a compressed schedule program, or when participation would impose a personal hardship.

Paragraph (1) of section 6127(b) provides that an employee in a unit with respect to which an organization of Government employees has not been accorded exclusive recognition shall not be required to participate in a compressed schedule program unless a majority of employees in the unit who would be included in the proposed program have voted to be so included.

Paragraph (2) of section 6127(b) requires an agency to take certain steps, upon the request of an employee, if it determines that participation in a compressed schedule would impose personal hardship. To alleviate the personal hardship, the agency must (A) except the employee from the compressed schedule; or (B) reassign the employee to the first position within the agency (i) which becomes vacant after the determination of personal hardship has been made, (ii) which is not included within the program, (iii) for which the employee is qualified, and (iv) which is acceptable to the employee. The last sentence of section 6127(b)(2) requires that an agency make a personal hardship determination within 10 days after written request for such a determination has been received.

Premium pay

Section 6128 of new subchapter II governs premium pay for overtime hours worked by employees under compressed schedules.

Subsection (a) of section 6128 provides that the provisions of sections 5542(a), 5544(a), and 5550(2) of title 5, United States Code, section 4107(e)(5) of title 38, United States Code, and section 7 of the Fair Labor Standards Act, as amended, or the provisions of any other law relating to premium pay for overtime work, shall not apply to hours of work which constitute a compressed schedule. These sections generally require premium pay for work in excess of 8 hours in a day. Since a compressed schedule, by definition, entails workdays longer than 8 hours, the existing laws relating to overtime make these schedules, in terms of payroll costs, more expensive, than the standard 8-hour day/5-day workweek. Also by definition, a compressed schedule cannot consist of a basic work requirement of greater than 80 hours in any biweekly period, and section 6128(b) provides that hours worked in excess of the compressed schedule shall be overtime and shall be paid as provided under whatever statutory provisions referred in section 6128(a) of new subchapter II are applicable to the employee. In the case of a part-time employee working under the same compressed schedule as a full-time employee, overtime shall be paid after the same number of hours of work in a day after which a full-time employee receives overtime pay.

Premium pay for Sunday work

Section 6128(c) provides that notwithstanding sections 5544(a), 5546(a), or 5550(1) of title 5, United States Code, or any other applicable provision of law, in the case of any employee on a compressed schedule who performs work (other than overtime work) on a tour of duty for any workday a part of which is performed on a Sunday, the employee is entitled to pay for work performed during the entire tour of duty at the rate of his basic pay, plus premium pay at a rate equal to 25 percent of his rate of basic pay. Sections 5544(a), 5546(a), and 5550(1) of title 5, United States Code, each limit the premium pay

differential for Sunday work to no more than 8 hours, as that period represents a basic workday for a full-time employee. Under a compressed schedule the daily basic work requirement normally consists of more than 8 hours and the 8-hour restriction on payment of premium pay is inequitable. Section 6128(c) ensures that employees on a compressed schedule receive Sunday premium pay for all hours worked on Sunday.

Premium pay for holiday work

Section 5546(b) of title 5, United States Code, provides that an employee who performs work on a holiday will not receive holiday pay for work in excess of 8 hours, since hours worked in excess of 8 on any day, including a holiday, are compensated as overtime hours. Under a compressed schedule, the daily basic work requirement normally consists of more than 8 hours, and, as is the case with Sunday premium pay discussed above, the 8-hour restriction on payment of premium pay would be inequitable. Accordingly, section 6128(d) provides that notwithstanding section 5546(b) of title 5, an employee on a compressed schedule who performs work on a holiday designated by statute or Executive order is entitled to pay at the rate of his basic pay, plus premium pay at a rate equal to the rate of his basic pay, for such work which is not in excess of his basic work requirement. If an employee works hours in excess of his basic work requirement, those hours would be overtime hours and section 6128(d) further provides that the employee is entitled to premium pay in accordance with applicable provisions of law relating to premium pay for such overtime hours.

Administration of leave and retirement provisions

Section 6129 of new subchapter II provides that for purposes of administering sections 6303(a), 6304, 6307 (a) and (c), 6323, 6326, and 8339(m) of title 5, United States Code, in the case of an employee who is under any flexible schedule or compressed schedule references to a day (or to multiples of parts thereof) contained in the above-stated sections shall be considered to be reference to 8 hours (or to the respective multiples thereof).

The current provisions in title 5, United States Code, relating to sick, annual, military, and funeral leave, and in some cases creditable service for retirement purposes, have as a frame of reference the 8-hour day with the result that the provisions are stated in terms of "days". Under either a flexible or a compressed schedule experiment the basic work requirement of a "day" could be more or less than 8 hours. Section 6129 translates the term "day" into an equivalent number of hours. This section neither decreases nor increases any employee's existing entitlement to leave, or to creditable service for retirement purposes. Part-time employees will continue to earn such entitlements on a pro rata basis.

Application of programs in the case of collective bargaining agreements

Section 6130 provides for the application of alternative work schedules in the case of collective bargaining agreements.

Paragraph (1) of subsection (a) clarifies that the institution, implementation, administration and termination of alternative work sched-

ules is within the collective bargaining process, subject to the other provisions of the subchapter.

Paragraph (2) of subsection (a) provides that employees within a unit with respect to which an organization of Government employees has been accorded exclusive recognition shall not be included under any flexible or compressed schedule program except to the extent expressly provided under a written agreement between the agency and such organization.

Section 6130(b) prohibits any agency from participating in any flexible or compressed schedule program if there is an agreement in effect which contains requirements to pay overtime which are inconsistent with the provisions of either section 6123 or 6128 or new subchapter II, as applicable. Sections 6123 and 6128, discussed above, establish the conditions for payment of overtime under flexible and compressed schedule programs. Therefore, any provisions of the contract which conflict with either section 6123 or 6128, as applicable, will have to be renegotiated for employees designated to participate in a program before the program may commence.

Section 6131 establishes criteria for alternative work schedules and a review of agency decisions to not institute and to terminate alternative work schedules.

Subsection (a) states that, subject to the provisions of subsection (c), an agency shall not establish and shall promptly terminate a schedule which has had or would have an adverse agency impact. Subsection (b) defines an adverse agency impact to be a reduction in agency productivity, a dimunition in the level of service to the public or an increase in the cost of agency operations. An increase in agency costs should not be construed to mean de minimis costs. Reasonable administrative costs to institute, modify, or terminate a schedule cannot be singled out as sole proof of an adverse agency impact. These costs should be considered in relationship to the normal costs of administering a traditional work schedule. If in comparison to the traditional work schedule it is apparent that costs have increased, grounds exist for an adverse agency impact. However, agency evidence of undue managerial burdens resulting from the operation and monitoring of the program is a proper consideration for determining an adverse agency impact.

Subsection (c) provides a resolution procedure if an impasse arises between an agency and an exclusive representative over the institution or termination of an alternative work schedule.

Paragraph (2) of subsection (c) provides that an impasse resulting from an agency determination to not establish an alternative work schedule be presented to the Federal Service Impasses Panel. The agency will bear the burden in showing that such a schedule is likely to have an adverse agency impact. This burden is not to be construed to require the application of an overly rigorous evidentiary standard since the issues will often involve the imprecise matters of productivity and the level of service to the public. It is expected the Panel will hear both sides of the issue and make its determination on the totality of evidence presented. If the evidence presented indicates that an adverse agency impact is likely to occur, the Panel must uphold the agency's decision not to institute the particular schedule at issue. If the Panel finds that there is not sufficient evidence to support a conclusion that

an adverse impact will occur, it is expected the Panel will direct the parties to fully negotiate out the particular schedule and not to simply impose it on the agency.

Paragraph (3) of subsection (c) allows an agency at any time to reopen a collective bargaining agreement to seek termination of a schedule if the agency determines that the schedule is having an adverse impact. The agency must attempt to negotiate with the exclusive representative over the question of termination. It is expected that the agency will consider a less drastic alternative to termination if that is possible. Any modification to the schedule is subject to the normal collective bargaining process, the authority of which resides in other provisions of the Code. If, however, the parties reach an impasse over termination, the impasse shall be presented to and resolved by the Panel. The burden again is on the agency to show that the schedule has caused an adverse agency impact. If a sufficient showing is made, the Panel must uphold the agency decision to terminate. The Panel must rule on the impasse within 60 days of its presentation. Finally, an agency may not terminate a schedule until the agreement covering such schedule is renegotiated, expires or terminated pursuant to the agreement or where an impasse arose in the reopening of the agreement, the date of the Panel's final decision.

The Committee does not intend for this section to preclude the pursuit of other forms of relief where applicable. This section applies solely to impasses resulting from agency decisions to not establish or to terminate a particular schedule. Refusals to negotiate, for instance, will continue to be handled under the authority of chapter 71 of this title.

Subsection (d) provides for a restricted definition of a flexible schedule. This restricted definition is only applicable to the provisions of this section and section 4 of this Act. In this section, flexible schedules means schedules which waive or utilize sections 5343(f), 5542(a), 5543(a)(1), 5544(a), 5545(a), and 1550 of this title and sections 4107(e) (2) and (3)(5) of title 38, section 7 of the Fair Labor Standards Act or any other law which deals with premium pay, overtime, and night differentials. The intent of this section is to constrict the normal negotiation process only over alternative work schedules that could not have been established prior to Public Law 95–390. Flexible schedules that fall under this definition are variable day, variable week, and maxiflex. All are defined and discussed in the "Interim Report To The President And The Congress" on the alternative work schedules experimental program.

Prohibition of coercion

Section 6132 of new subchapter II provides protection against the coercion of employees concerning participation in flexible or compressed schedule programs. This provision recognizes the possibility that an overly zealous agency supervisor or manager who recognizes that certain payroll or other savings may accrue to his agency through the introduction or implementation of a flexible or compressed schedule could exert pressure on employees with regard to such introduction or implementation.

Accordingly, subsection (a) of section 6132 prohibits an employee from intimidating, threating, or coercing, or attempting to intimidate,

threaten, or coerce an employee for the purpose of interfering with: (1) the employee's right under section 6122 and 6123 to elect the time of his arrival or departure, to work or not to work credit hours, or to request compensatory time off in lieu of payment for overtime hours; or (2) such employee's right under section 6127(b)(1) to vote whether or not to be included under a compressed schedule or such employee's right to request an agency determination as to personal hardship under section 6127(b)(2). Subsection (b) of section 6132 defines the terms "intimidate, threaten, or coerce" as including, but not limited to, promising to confer or conferring any benefit (such as appointment, promotion, or compensation), or effecting or threatening any reprisal (such as deprivation of appointment, promotion, or compensation).

Existing law authorizing flexible and compressed schedule experiments provides procedures for disciplining employees who coerce other employees (see Public Law 95–390, section 303(b)). The passage of the Civil Service Reform Act of 1978 (Public Law 95–454) has made these procedures unnecessary. Under that Act, the Special Counsel of the Merit Systems Protection Board is responsible for investigating violations of civil service laws (see 5 U.S.C. 1206(c)(1)(D)), and the procedures for initiating disciplinary action in such cases, as well as the penalties which may be imposed, are spelled out (see 5 U.S.C. 1206, 1207).

Regulations; technical assistance; program review

Section 6133(a) requires the Office of Personnel Management to prescribe regulations necessary for the administration of flexible and compressed schedule programs.

Section 6132(b)(1) requires the Office to provide educational material, and technical aids and assistance, for use by agencies in connection with establishing and maintaining flexible and compressed schedule programs.

Section 6133(b)(2) provides that in order to provide the most effective materials, aids, and asistance, the Office shall conduct periodic reviews of flexible and compressed schedule programs particularly insofar as those programs may affect: (1) the efficiency of Government operations; (2) mass transit facilities and traffic; (3) levels of energy consumption; (4) service to the public; (5) increased opportunities for full-time and part-time employment; and (6) employees job satisfaction and nonwork-life.

Section 6133(c) provides that, with respect to employment in the Library of Congress, the Librarian of Congress will prescribe regulations necessary for the administration of flexible and compressed schedule programs.

SECTION 3

This section would amend the definition of "part-time career employment" in section 3401 of title 5, United States Code, to reflect the possibility of part-time employment under an alternative work schedule.

SECTION 4

This section authorizes an agency to continue a schedule established pursuant to Public Law 95–390 subject to a review within 90 days following the date of enactment. If an agency finds a schedule to have

reduced productivity, diminished service to the public, or increased cost in agency operations, the agency shall immediately terminate such a schedule irrespective of any negotiated agreement. Such a termination is nonreviewable.

SECTION 5

Section 5 provides that the authorization for this program ends three years after the date of enactment.

COST

In accordance with Rule XXVI, paragraph 11(a) of the Standing Rules of the Senate, the Committee received the following cost estimate for S. 2240:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., April 16, 1982.

Hon. WILLIAM V. ROTH, Jr.,
Chairman, Committee on Governmental Affairs, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for S. 2240, the Federal Employees Flexible and Compressed Work Schedules Act of 1982.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

ALICE M. RIVLIN, *Director.*

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

1. Bill number: S. 2240.

2. Bill title: Federal Employees Flexible and Compressed Work Schedules Act of 1982.

3. Bill status: As ordered reported by the Senate Committee on Governmental Affairs, April 12, 1982.

4. Bill purpose: This bill would provide permanent authorization for federal agencies to use flexible and compressed employee work schedules. The bill would also authorize the use of time clocks by the Bureau of Engraving and Printing.

5. Cost estimate:

	Millions
Authorization level:	
Fiscal year:	
1983	$0.4
1984	−1.0
1985	−1.1
1986	−1.2
1987	−1.2
Estimated outlays:	
Fiscal year:	
1983	.4
1984	−1.0
1985	−1.1
1986	−1.2
1987	−1.2

6. Basis of estimate: The primary cost impact of this bill would result from the provision permitting the use of time clocks by the Bureau of Engraving and Printing. Initial implementation costs for this provision include $500,000 for installation of time-keeping equipment. The Bureau of Engraving and Printing expects to eliminate approximately 55 clerical positions as a result of the utilization of time clocks. The labor force reduction would result in savings of approximately $1.1 to $1.3 million annually in fiscal years 1984 through 1987, assuming the system is fully operational by the beginning of fiscal year 1984. The labor force reductions would result in smaller savings of about $200,000 in fiscal year 1983, as positions are vacated through attrition and are not filled.

Costs incurred and savings realized by the Bureau of Engraving and Printing would be reflected in the Bureau's charges to its customer agencies. This estimate assumes that the labor force reduction at the Bureau of Engraving and Printing is achieved through attrition and by reassigning displaced employees to other positions at the Bureau. If any layoffs are required, severance pay and related costs would reduce the estimate savings.

It is estimated that there will be little additional cost, and perhaps some initial savings, resulting from extension of the authority for flexible and compressed employee work schedules. Since regulations and educational materials have already been developed, requirements of the bill relating to these items are not expected to have significant budgetary impact. The costs of reviewing agency programs will depend on the level of effort the Office of Personnel Management devotes to this requirement. Costs for this effort are not likely to exceed $100,000 per year. In 1982, some savings might be realized because agencies won't have to undertake the administrative and educational tasks associated with changing to more restrictive work schedules when the current authorization expires in March.

7. Estimate comparison: The Department of the Treasury estimates savings of approximately $1 million per year would result from enactment of the time clock provision of this bill. This is consistent with the CBO estimate.

8. Previous CBO estimate: CBO prepared a cost estimate for H.R. 5366, the House version of S. 2240, on February 9, 1982 for the House Committee on Post Office and Civil Service. The earlier cost estimate did not provide for the use of time clocks by the Bureau of Engraving and Printing.

9. Estimate prepared by: Judy L. Walker.

10. Estimate approved by:

JAMES L. BLUM,
Assistant Director for Budget Analysis.

EVALUATION OF REGULATORY IMPACT

Paragraph 11(b)(1) of Rule XXVI requires each report accompanying a bill to evaluate "the regulatory impact which would be incurred in carrying out the bill."

S. 2240 will not have any regulatory impact. It does not authorize any additional regulation of activities in the private sector, impose any

new record keeping or reporting requirements on any segment of the public, or abolish any existing regulations.

COMMITTEE ACTION

In compliance with paragraph 7(c) of rule XXVI of the Standing Rules of the Senate, the committee voted to favorably report S. 2240 as follows:

YEAS—14	NAYS—1
Senator Percy	Senator Rudman
Senator Stevens	
Senator Mathias	
Senator Danforth	
Senator Cohen	
Senator Durenberger	
Senator Mattingly	
Senator Eagleton	
Senator Chiles	
Senator Nunn	
Senator Glenn	
Senator Pryor	
Senator Levin	
Senator Roth	

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no changes are proposed is shown in roman):

TITLE 5, UNITED STATES CODE

* * * * * * *

PART III—EMPLOYEES

* * * * * * *

§ 3401. Definitions

(2) "part-time career employment" means part-time employment of 16 to 32 hours a week (*or 32 or 64 hours during a biweekly pay period in the case of a flexible or compressed work schedule under subchapter II of chapter 61 of this title*) under a schedule consisting of an equal or varied number of hours per day, whether in a position which would be part-time without regard to this section or one establisehd to allow job-sharing or comparable arrangements, but does not include employment on a temporary or intermittent basis.

* * * * * * *

Subpart E—Attendance and Leave

CHAPTER 61—HOURS OF WORK

Subchapter I—General Provisions

Sec.

Subchapter I—General Provisions

§ 6101. Basic 40-hour workweek; work schedules; regulations

(a)(1) For the purpose of this subsection, "employee" includes an employee of the government of the District of Columbia and an employee whose pay is fixed and adjusted from time to time under section 5343 or 5349 of this title, or by a wage board or similar administrative authority serving the same purpose, but does not include an employee or individual excluded from the definition of employee in section 5541(2) of this title, except as specifically provided under this paragraph.

* * * * * * *

Subchapter II—Flexible and Compressed Work Schedules

§ 6120. Purpose

"The Congress finds that the use of flexible and compressed work schedules has the potential to improve productivity in the Federal Government and provide greater service to the public.

§ 6121. Definitions

For purposes of this subchapter—

(1) "agency" means any Executive agency, any military department, and the Library of Congress;

(2) "employee" has the meaning given it by section 2105 of this title;

(3) "basic work requirement" means the number of hours, excluding overtime hours, which an employee is required to work or is required to account for by leave or otherwise;

(4) "credit hours" means any hours, within a flexible schedule established under section 6122 of this title, which are in excess of an employee's basic work requirement and which the employee elects to work so as to vary the length of a workweek or a workday;

(5) "compressed schedule" means—

(A) in the case of a full-time employee, an 80-hour biweekly basic work requirement which is scheduled for less than 10 workdays, and

(B) in the case of a part-time employee, a biweekly basic work requirement of less than 80 hours which is scheduled for less than 10 workdays;

(6) "overtime hours", when used with respect to flexible schedule programs under sections 6122 through 6126 of this title, means all hours in excess of 8 hours in a day or 40 hours in a week which are officially ordered in advance, but does not include credit hours; and

(7) "overtime hours", when used with respect to compressed schedule programs under sections 6127 and 6128 of this title, means any hours in excess of those specified hours which constitute the compressed schedule.

(8) "collective bargaining", "collective bargaining agreement", and "exclusive representative" have the same meanings given such terms—

(A) by section 7103(a)(12), (8), and (16) of this title, respectively, in the case of any unit covered by chapter 71 of this title; and

(B) in the case of any other unit, by the corresponding provisions applicable under the personnal system covering this unit.

§ 6122. Flexible schedules; agencies authorized to use

(a) Notwithstanding section 6101 of this title, each agency may establish, in accordance with this subchapter, programs which allow the use of flexible schedules which include—

(1) designated hours and days during which an employee on such a schedule must be present for work; and

(2) designated hours during which an employee on such a schedule may elect the time of such employee's arrival at and departure from work, solely for such purpose or, if and to the extent permitted, for the purpose of accumulating credit hours to reduce the length of the workweek or another workday.

An election by an employee referred to in paragraph (2) shall be subject to limitations generally prescribed to ensure that the duties and requirements of the employee's position are fulfilled.

(b) Notwithstanding any other provision of this subchapter, but subject to the terms of any written agreement referred to in section 6130(a) of this title, if the head of an agency determines that any organization within the agency which is participating in a program under subsection (a) is being substantially disrupted in carrying out

its functions or is incurring additional costs because of such participation, such agency head may—

(1) restrict the employees' choice of arrival and departure time,

(2) restrict the use of credit hours, or

(3) exclude from such program any employee or group of employees.

§ 6123. Flexible schedules; computation of premium pay

(a) For purposes of determining compensation for overtime hours in the case of an employee participating in a program under section 6122 of this title—

(1) the head of an agency may, on request of the employee, grant the employee compensatory time off in lieu of payment for such overtime hours, whether or not irregular or occasional in nature and notwithstanding the provisions of sections 5542(a), 5543(a)(1), 5544(a), and 5550 of this title, section 4107(e)(5) of title 38, section 7 of the Fair Labor Standards Act (29 U.S.C. 207), or any other provision of law; or

(2) the employee shall be compensated for such overtime hours in accordance with such provisions, as applicable.

(b) Notwithstanding the provisions of law referred to in subsection (a)(1) of this section, an employee shall not be entitled to be compensated for credit hours worked except to the extent authorized under section 6126 of this title or to the extent such employee is allowed to have such hours taken into account with respect to the employee's basic work requirement.

(c)(1) Notwithstanding section 5545(a) of this title, premium pay for nightwork will not be paid to an employee otherwise subject to such section solely because the employee elects to work credit hours, or elects a time of arrival or departure, at a time of day for which such premium pay is otherwise authorized, except that—

(A) if an employee is on a flexible schedule under which—

(i) the number of hours during which such employee must be present for work, plus

(ii) the number of hours during which such employee may elect to work credit hours or elect the time of arrival at and departure from work,

which occur outside of the nightwork hours designated in or under such section 5545(a) total less than 8 hours, such premium pay shall be paid for those hours which, when combined with such total, do not exceed 8 hours, and

(B) if an employee is on a flexible schedule under which the hours that such employee must be present for work include any hours designated in or under such section 5545(a), such premium pay shall be paid for such hours so designated.

(2) Notwithstanding section 5343(f) of this title, and section 4107(e)(2) of title 38, night differential will not be paid to any employee otherwise subject to either of such sections solely because such employee elects to work credit hours, or elects a time of arrival or departure, at a time of day for which night differential is otherwise authorized, except that such differential shall be paid to an employee on a flexible schedule under this subchapter—

(A) in the case of an employee subject to subsection (f) of such section 5343, for which all or a majority of the hours of such schedule for any day fall between the hours specified in such subsection, or

(B) in the case of an employee subject to subsection (e)(2) of such section 4107, for which 4 hours of such schedule fall between the hours specified in such subsection.

§ 6124. Flexible schedules; holidays

Notwithstanding sections 6103 and 6104 of this title, if any employee on a flexible schedule under section 6122 of this title is relieved or prevented from working on a day designated as a holiday by Federal statute or Executive order, such employee is entitled to pay with respect to that day for 8 hours (or, in the case of a part-time employee, an appropriate portion of the employee's biweekly basic work requirement as determined under regulations prescribed by the Office of Personnel Management).

§ 6125. Flexible schedules; time-recording devices

Notwithstanding section 6106 of this title, the Office of Personnel Management or any agency may use recording clocks as part of programs under section 6122 of this title, and the Bureau of Engraving and Printing may use recording clocks to record time and attendance of employees of such Bureau without regard to whether the use of recording clocks is part of a program under section 6122 of this title.

§ 6126. Flexible schedules; credit hours; accumulation and compensation

(a) Subject to any limitation prescribed by the Office of Personnel Management or the agency, a full-time employee on a flexible schedule can accumulate not more than 24 credit hours, and a part-time employee can accumulate not more than one-fourth of the hours in such employee's biweekly basic work requirement, for carryover from a biweekly pay period to a succeeding biweekly pay period for credit to the basic work requirement for such period.

(b) Any employee who is on a flexible schedule program under section 6122 of this title and who is no longer subject to such a program shall be paid at such employee's then current rate of basic pay for—

(1) in the case of a full-time employee, not more than 24 credit hours accumulated by such employee, or

(2) in the case of a part-time employee, the number of credit hours (not in excess of one-fourth of the hours in such employee's biweekly basic work requirement) accumulated by such employee.

§ 6127. Compresed schedules; agencies authorized to use

(a) Notwithstanding section 6401 of this title, each agency may establish programs which use a 4-day workweek or other compressed schedule.

(b)(1) An employee in a unit with respect to which an organization of Government employees has not been accorded exclusive recognition shall not be required to participate in any program under subsection (a) unless a majority of the employees in such unit who, but for this paragraph, would be included in such program have voted to be so included.

(2) Upon written request to any agency by an employee, the agency, if it determines that participation in a program under subsection (a) would impose a personal hardship on such employee, shall—

(A) except such employee from such program; or

(B) reassign such employee to the first position within the agency—

(i) which becomes vacant after such determination,

(ii) which is not included within such program,

(iii) for which such employee is qualified, and

(iv) which is acceptable to the employee.

A determination by an agency under this paragraph shall be made not later than 10 days after the day on which a written request for such determination is received by the agency.

§ 6128. Compressed schedules; computation of premium pay

(a) The provisions of sections 5542(a), 5544(a), and 5550(2) of this title, section 4107(e)(5) of title 38, section 7 of the Fair Labor Standards Act (29 U.S.C. 207), or any other law, which relate to premium pay for overtime work, shall not apply to the hours which constitute a compressed schedule.

(b) In the case of any full-time employee, hours worked in excess of the compressed schedule shall be overtime hours and shall be paid for as provided by the applicable provisions referred to in subsection (a) of this section. In the case of any part-time employee on a compressed schedule, overtime pay shall begin to be paid after the same number of hours of work after which a full-time employee on a similar schedule would begin to receive overtime pay.

(c) Notwithstanding section 5544(a), 5546(a), or 5550(1) of this title, or any other applicable provision of law, in the case of any full-time employee on a compressed schedule who performs work (other than overtime work) on a tour of duty for any workday a part of which is performed on a Sunday, such employee is entitled to pay for work performed during the entire tour of duty at the rate of such employee's basic pay, plus premium pay at a rate equal to 25 percent of such basic pay rate.

(d) Notwithstanding section 5546(b) of this title, an employee on a compressed schedule who performs work on a holiday designated by Federal statute or Executive order is entitled to pay at the rate of such employee's basic pay, plus premium pay at a rate equal to such basic pay rate, for such work which is not in excess of the basic work requirement of such employee for such day. For hours worked on such a holiday in excess of the basic work requirement for such day, the employee is entitled to premium pay in accordance with the provisions of section 5542(a) or 5544(a) of this title, as applicable, or the provisions of section 7 of the Fair Labor Standards Act (29 U.S.C. 207) whichever provisions are more beneficial to the employee.

§ 6129. Administration of leave and retirement provisions

For purposes of administering sections 6303(a), 6304, 6307 (a) and (c), 6323, 6326, and 8339(m) of this title, in the case of an employee who is in any program under this subchapter, references to a day or workday (or to multiples or parts thereof) contained in such sections shall be considered to be references to 8 hours (or to the respective multiples or parts thereof).

§ 6130. Application of programs in the case of collective bargaining agreements

(a) (1) In the case of employees in a unit represented by an exclusive representative, any flexible or compressed work schedule, and the establishment and termination of any such schedule, shall be subject to the provisions of this subchapter and the terms of a collective bargaining agreement between the agency and the exclusive representative.

(2) Employees within a unit represented by an exclusive representative shall not be included within any program under this subchapter except to the extent expressly provided under a collective bargaining agreement between the agency and the exclusive representative.

(b) An agency may not participate in a flexible or compressed schedule program under a collective bargaining agreement which contains premium pay provisions which are inconsistent with the provisions of section 6123 or 6128 of this title, as applicable.

§ 6131. Criteria and review

(a) Notwithstanding the preceding provisions of this subchapter or any collective bargaining agreement and subject to subsection (c) of this section, if the head of an agency finds that a particular flexible or compressed schedule under this subchapter has had or would have an adverse agency impact, the agency shall promptly determine not to—

(1) establish such schedule; or

(2) continue such schedule, if the schedule has already been established.

(b) For purposes of this section, "adverse agency impact" means—

(1) a reduction of the productivity of the agency;

(2) a diminished level of services furnished to the public by the agency; or

(3) an increase in the cost of agency operations.

(c) (1) This subsection shall apply in the case of any schedule covering employees in a unit represented by an exclusive representative.

(2) (A) If an agency and an exclusive representative reach an impasse in collective bargaining with respect to an agency determination under subsection (a) (1) not to establish a flexible or compressed schedule, the impasse shall be presented to the Federal Service Impasses Panel (hereinafter in this section referred to as the "Panel").

(B) The Panel shall promptly consider any case presented under subparagraph (A), and shall take final action in favor of the agency's determination if the finding on which it is based is supported by evidence that the schedule is likely to cause an adverse agency impact.

(3) (A) If an agency and an exclusive representative have entered into a collective bargaining agreement providing for use of a flexible or compressed schedule under this subchapter and the head of the agency determines under subsection (a) (2) to terminate a flexible or compressed schedule, the agency may reopen the agreement to seek termination of the schedule involved.

(B) If the agency and exclusive representative reach an impasse in collective bargaining with respect to terminating such schedule, the impasse shall be presented to the Panel.

(C) The Panel shall promptly consider any case presented under subparagraph (B), and shall rule on such impasse not later than 60 days after the date the Panel is presented the impasse. The Panel shall take final action in favor of the agency's determination to terminate a schedule if the finding on which the determination is based is supported by evidence that the schedule has caused an adverse agency impact.

(D) Any such schedule may not be terminated until—

(i) the agreement covering such schedule is renegotiated or expires or terminates pursuant to the terms of that agreement; or

(ii) the date of the Panel's final decision, if an impasse arose in the reopening of the agreement under subparagraph (A) of this paragraph.

(d) This section shall not apply with respect to flexible schedules that may be established without regard to the authority provided under this subchapter.

§ 6132. Prohibition of coercion

(a) An employee may not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with—

(1) such employee's rights under sections 6122 through 6126 of this title to elect a time of arrival or departure, to work or not to work credit hours, or to request or not to request compensatory time off in lieu of payment for overtime hours; or

(2) such employee's right under section 6127(b)(1) of this title to vote whether or not to be included within a compressed schedule program or such employee's right to request an agency determination under section 6127(b)(2) of this title.

(b) For the purpose of subsection (a), the term "intimidate, threaten, or coerce" includes, but is not limited to, promising to confer or conferring any benefit (such as appointment, promotion, or compensation), or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation).

§ 6133. Regulations; technical assistance; program review

(a) The Office of Personnel Management shall prescribe regulations necessary for the administration of the programs established under this subchapter.

(b)(1) The Office shall provide educational material, and technical aids and assistance, for use by an agency in connection with establishing and maintaining programs under this subchapter.

(2) In order to provide the most effective materials, aids, and assistance under paragraph (1), the Office shall conduct periodic reviews of programs established by agencies under this subchapter particularly insofar as such programs may affect—

(A) the efficiency of Government operations;

(B) mass transit facilities and traffic;

(C) levels of energy consumption;

(D) service to the public;

(E) increased opportunities for full-time and part-time employment; and

(F) employees' job satisfaction and nonworklife.

(c) With respect to employees in the Library of Congress, the authority granted to the Office of Personnel Management under this subchapter shall be exercised by the Librarian of Congress.

ADDITIONAL VIEWS OF MR. RUDMAN

Before providing for permanent authorization for federal agencies to use flexible and compressed work schedules, I think we should consider the service aspects of the federal government and the actual benefits which have been derived from the three-year flexible and compressed work schedules experiment. My own experience with flexitime leads me to question the whole concept. Because some federal employees are on work schedules that differ from normal work hours, constituents in need of their expertise are many times unable to contact them. Most people in the country are on a normal working schedule, and agencies were established, in large part, to provide services for those people. This service is somewhat impaired when agency employees are on flexitime. Consequently, I wonder whether or not we are going too far in accommodating the wishes of the individuals in government who are supposed to serve the country. Additionally, I think it is interesting to note that the OPM report on flexitime indicates that flexitime did not significantly reduce productivity. This is interesting in light of the fact that the argument has been that flexitime would raise morale and increase productivity. If there has been no appreciable increase in productivity due to flexitime, I question the merit of extending the experimental program to the status of permanent authorization.

WARREN B. RUDMAN.

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